



[BILLING CODE 6760-01-P]

**FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**

**5 CFR Part 1639**

**Administrative Wage Garnishment**

**AGENCY:** Federal Retirement Thrift Investment Board.

**ACTION:** Final Rule.

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**SUMMARY:** This regulation implements the authority established under the Debt Collection Improvement Act of 1996 (DCIA) for the Federal Retirement Thrift Investment Board (Agency) to order a non-Federal employer to withhold up to 15 percent of an employee's disposable income to pay a non-tax delinquent debt owed to the Agency or Thrift Savings Fund.

**DATES:** This rule is effective [INSERT DATE 31 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action, unless adverse comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If adverse comment is received, the Federal Retirement Thrift Investment Board will publish a timely withdrawal of the rule in the Federal Register.

**ADDRESSES:** You may submit comments using one of the following methods:

- Mail: Office of General Counsel, Attn: James B. Petrick, Federal Retirement Thrift Investment Board, 77 K Street, N.E.,

Washington, D.C. 20002.

- Hand Delivery/Courier: The address for sending comments by hand delivery or courier is the same as that for submitting comments by mail.

- Facsimile: Comments may be submitted by facsimile at (202) 942-1676.

The most helpful comments explain the reason for any recommended change and include data, information, and the authority that supports the recommended change.

**FOR FURTHER INFORMATION CONTACT:** Ryan R. Montgomery at 202-942-1661.

**SUPPLEMENTARY INFORMATION:** The Agency administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401-79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

## **Background**

In 1996, Congress enacted the Debt Collection Improvement Act (Pub. L. 104-134, 110 Stat. 1321-1358, approved April 26,

1996), which amended the Debt Collection Act of 1982. Section 31001(o) of the DCIA authorizes collection of Federal agency debt by administrative wage garnishment (section 31001(o) is codified at 31 U.S.C. 3720D). Wage garnishment is a legal process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor in satisfaction of a withholding order. The DCIA authorizes Federal agencies to withhold up to 15 percent of an employee's disposable income to pay a non-tax delinquent debt owed to the agency. Prior to the enactment of the DCIA, agencies were required to obtain a court judgment before garnishing the wages of non-Federal employees.

The DCIA directed the Secretary of the Treasury to issue implementing regulations (see 31 U.S.C. 3720D(h)) on this subject. On May 6, 1998 (63 FR 25136), the Department of the Treasury published a final rule implementing the statutory administrative wage garnishment requirements at 31 CFR 285.11. Paragraph (f)(1) of 31 CFR 285.11 provides that agencies prescribe regulations for the conduct of administrative wage garnishment hearings consistent with the section or adopt the section without change by reference.

This final rule amends the Agency's regulations at 5 CFR part 1639 to adopt 31 CFR 285.11 in its entirety. Specifically, the final rule establishes a new provision that contains a

cross-reference to 31 CFR 285.11.

### **Overview of the Administrative Wage Garnishment Process**

Readers should refer to the Department of the Treasury regulation at 31 CFR 285.11 for details regarding the administrative wage garnishment procedures that are adopted by this rule. For the convenience of readers, the following presents a very brief overview of the rules and procedures codified at 31 CFR 285.11.

1. *Notice to debtor.* At least 30 days before the Agency initiates garnishment proceedings, the Agency will give the debtor written notice informing him or her of the nature and amount of the debt, the intention of the Agency to collect the debt through deductions from pay, and an explanation of the debtor's rights regarding the proposed action.
2. *Rights of debtor.* The Agency will provide the debtor with an opportunity to inspect and copy records related to the debt, to establish a repayment agreement, and to receive a hearing concerning the existence or amount of the debt and the terms of a repayment schedule. A hearing must be held prior to the issuance of a withholding order if the debtor's request is timely received. For hearing requests that are not received in the specified timeframe, the Agency need not delay the issuance of a withholding order prior to conducting a hearing. The Agency may not garnish the wages of a debtor who has been involuntarily

separated from employment until that individual has been reemployed continuously for at least 12 months. The debtor bears the responsibility of notifying the Agency of the circumstances surrounding an involuntary separation from employment.

3. *Hearing official.* The Department of the Treasury regulations authorize the head of each agency to designate any qualified individual as a hearing official. This rule provides that any hearing required to establish the Agency's right to collect a debt through administrative wage garnishment will be conducted by a qualified individual selected by the Executive Director of the Agency. The hearing official is required to issue a written decision no later than 60 days after the request for a hearing is made. The hearing official's decision is the final agency action for purposes of judicial review.

4. *Employer's responsibilities.* The Agency will send to the employer of a delinquent debtor a wage garnishment order directing that the employer pay a portion of the debtor's wages to the Agency. The employer is required to certify certain payment information about the debtor. Employers are not required to vary their normal pay cycles in order to comply with these requirements. Employers are prohibited from taking disciplinary actions against the debtor because the debtor's wages are subject to administrative garnishment.

5. *Garnishment amounts.* As provided in the DCIA, no more than 15% of the debtor's disposable pay for each pay period may be garnished. Special rules apply to calculating the amount to be withheld from a debtor's pay that is subject to multiple withholding orders. A debtor may request a review by the Agency of the amount being garnished under a wage garnishment order based on materially changed circumstances, such as disability, divorce, or catastrophic illness, which result in financial hardship.

#### **Administrative Procedure Act Requirements**

The Agency has determined that implementation of this rule without prior notice and the opportunity for public comment is warranted because this rule is one of agency procedure and practice and therefore is exempt from notice and comment rulemaking requirements under the Administrative Procedure Act (APA) at 5 U.S.C. 553(b) (A) and (B).

This final rule parallels the existing operational regulations of other agencies to effectuate the collection of non-tariff and nontax debts to implement 31 U.S.C. 3711. Because this rule parallels existing, long-standing rules that have already been subject to APA notice and comment procedures, we believe that publishing this rule with the usual notice and comment procedures is unnecessary. Accordingly, the Agency has

determined that prior notice and public comment procedures would be unnecessary pursuant to 5 U.S.C. 553(b) (B) .

#### **Regulatory Flexibility Act**

Because the Agency has determined that it may issue these rules without public comment, the Agency is also not required to publish any initial or final regulatory flexibility analysis under the Regulatory Flexibility Act as part of such action. See 5 U.S.C. 603(a) , 604(b) .

#### **Paperwork Reduction Act**

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

#### **Unfunded Mandates Reform Act of 1995**

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501-1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of \$100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under 1532 is not required.

#### **Submission to Congress and the General Accounting Office**

Pursuant to 5 U.S.C. 810(a) (1) (A), the Agency submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the

Comptroller General of the United States before publication of this rule in the Federal Register. This rule is not a major rule as defined at 5 U.S.C. 804(2).

**List of Subjects in 5 CFR Part 1639**

Claims, Government employees, Income taxes, Wages.

Gregory T. Long,  
Executive Director,  
Federal Retirement Thrift Investment Board.

For the reasons stated in the preamble, the Agency amends 5 CFR chapter VI as follows:

**PART 1639 -- CLAIMS COLLECTION**

1. Amend the authority citation for part 1639 by revising it to read as follows:

Authority: 5 U.S.C. 8474 and 31 U.S.C. 3711, 3716, 3720A, and 3720D.

2. Revise §1639.1 to read as follows:

§1639.1 Authority.

The regulations of this part are issued under 5 U.S.C. 8474 and 31 U.S.C. 3711, 3716, 3720A, and 3720D.

3. Add subpart E to read as follows:

Subpart E - Administrative Wage Garnishment



§1639.60 Administrative wage garnishment.

(a) General. The Board may use administrative wage garnishment to collect debts from non-Federal employees in accordance with the requirements of 31 U.S.C. 3720D and 31 CFR 285.11. This subpart adopts and incorporates all of the provisions of 31 CFR 285.11 concerning administrative wage garnishment, including the hearing procedures described in 31 CFR 285.11(f). This section does not apply to collection of debt by Federal salary offset, under 5 U.S.C. 5514, the process by which the Board collects debts from the salaries of Federal employees.

(b) [Reserved]

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